

## **DOE TEC Tribal Topic Group Meeting Summary Green Bay, Wisconsin – September 14, 2006**

**Session Chaired by: Jay Jones, DOE, Office of Civilian Radioactive Waste Management, OCRWM**

**Regular Members in Attendance: Sandra Alexander (Confederated Tribes of the Umatilla Indian Reservation, CTUIR); Kenny Anderson, Las Vegas Paiute Tribe; Richard Arnold, Las Vegas Indian Center/Pahrump Paiute Tribe); Kevin Tafoya, Santa Clara Pueblo; Christina Nelson, National Conference of State Legislatures; Ed Gonzales, ELG Engineering/Pueblo de San Ildefonso; Judith Holm, OCRWM; Marsha Keister, Idaho National Laboratory; Joe Kennedy, Timbisha Shoshone Tribe; Daniel King, Oneida Nation of Wisconsin; Sue Loudner, Pueblo of Acoma; Bob Lupton, DOE Yucca Mountain Project; Corinne Macaluso, OCRWM; Kevin Mariano, Pueblo of Acoma; Calvin Meyers, Moapa Band of Paiutes; Michele (Titto) Moses, CTUIR; Willie Preacher, Shoshone-Bannock Tribes; Shannon Rindfleisch, Prairie Island Indian Community; Randall Vicente, Pueblo of Acoma; Neil Weber, Pueblo de San Ildefonso; Christopher Wells, Southern States Energy Board**

The meeting was led by Jay Jones (DOE/OCRWM). Following a brief welcome by Jay, Dan King (Oneida Nation and meeting site host) delivered an opening prayer. Discussions proceeded as follows:

### DOE Headquarters Tribal Activities Update (Jay Jones)

- Kristen Ellis has temporarily replaced Steve Grey as the Director of Indian Affairs in the Office of Congressional and Intergovernmental Affairs. She can be reached by phone at 202-586-5810 or e-mail ([kristen.ellis@hq.doe.gov](mailto:kristen.ellis@hq.doe.gov)).
- Jozette Booth (phone: 202-586-7292/e-mail: [jozette.booth@hq.doe.gov](mailto:jozette.booth@hq.doe.gov)) is the OCRWM representative to the recently formed DOE Tribal Steering Committee, which meets monthly to ensure consistency throughout the programs.
- A draft Report to Congress on Energy Policy Act of 2005 Section 1813 has been issued. Tribal Topic Group members were e-mailed a copy of the report and related reading materials prior to the TEC meeting.
- DOE's Office of Environmental Management (EM) has drafted an Implementation Framework document for the DOE "Tribal Government Policy." Willie Preacher (Shoshone-Bannock Tribes and member of this Topic Group) participated in preparation and review of the draft and provided his perspective on the document.
- Michael Richard is the DOE representative on the White House Indian Affairs Executive Working Group.

### OCRWM Activities Update (Jay Jones)

- Thirty nine Tribes have been identified along potential transportation routes to Yucca Mountain. A letter introducing the OCRWM program was sent to those Tribes in March 2005, and the letter was followed up with phone calls to each Tribe. Jay Jones has visited seven of the Tribes thus far.
- Jay will be in Albuquerque in November and hopes to be able to meet with some of the Pueblos and the Navajo Nation. Wilda Portner (support contractor) will help coordinate.
- OCRWM is still pursuing a workshop with the 39 Tribes sometime next year to discuss transportation and 180(c) activities.

- OCRWM has a new Tribal intern, who will be helping Jay with Tribal outreach.
- Jay plans to attend the next State and Tribal Government Working Group (STGWG) meeting in November.
- A new TEC Routing Topic Group is being formed; Tribal representatives are encouraged to participate. Tasks for the group will likely include route selection criteria, identification of a national suite of highway and rail routes, and review of routes generated by computer models, including the identification of specific areas to avoid. OCRWM staff will be sending e-mails and making phone calls about this group in the next few weeks.

#### DOE Nevada Update (Bob Lupton, OCRWM Office of External Affairs, and Vicki Best, support contractor)

- Tribes comprising the Consolidated Group of Tribes and Organizations (CGTO) of the Yucca Mountain Project's Native American Interaction Program, and who are identified by OCRWM Headquarters as part of the 39 Tribes along potential transportation routes to Yucca Mountain are encouraged to continue involvement in transportation issues related to Yucca Mountain.
- The American Indian Writers Subgroup (AIWS) visited Yucca Mountain in April. Areas of interest to the CGTO Tribes represented included cultural resource surveys, plans for the onsite portion of the rail line leading to Yucca Mountain, and proposed site infrastructure upgrades in support of human health and safety.

#### National Conference of State Legislatures (NCSL) Update (Christina Nelson)

- Andrea Wilkins (NCSL) is the project lead for the State Tribal Relations Project.
- Since 1999, NCSL has had a partnership with the National Congress of American Indians (NCAI) to benefit policy development and understanding between State legislators and Tribal Leaders, known as the State-Tribal Relations Project. The Project Advisory Council includes State and Tribal representatives.
- NCSL has a State legislation database dealing with Tribal issues.
- NCSL and NCAI staff the National Caucus of Native American State Legislators (NCNASL). Comprised of 56 legislators from 13 States, this group is broken into committees. Bob Fry (NCSL) chairs the Environmental Committee. The NCNASL had a kick-off event at the National Museum for the American Indian in Washington, DC, in April 2006.
- NCSL also staffs STGWG.
- NCSL is a valuable organization that OCRWM can use to assist in coordination with Tribes in its discussion of transportation and other high-level waste and spent nuclear fuel issues.

#### Questions from Tribal Topic Group on NCSL:

- How is the organization funded? Answer: Through a Kellogg Foundation grant and other funding sources. OCRWM also has a cooperative agreement with NCSL to support a State legislator working group on high-level waste issues. Christina Nelson can be contacted by phone at 303-856-1519 or e-mail at [christina.nelson@ncsl.org](mailto:christina.nelson@ncsl.org).

#### Tribal Updates

Jay opened the floor to the Tribal Representatives for comments and questions.

- One representative asked how sovereign nations can obtain the "affected status." Jay responded that the U.S. Department of Interior (DOI) makes those determinations. He also said that Section 180(c) funds will be provided to Tribes through whose reservation OCRWM makes shipments to Yucca Mountain and that the "affected status" discussed in the Nuclear Waste Policy Act (the Act) is a separate legal issue and does not determine eligibility for Section 180(c). When questioned on the timeframe, Corinne Macaluso (OCRWM) referred the participants to the discussion on 180(c) scheduled later in the Topic Group agenda. Bob Lupton stressed the difference between "affected Tribe" status pursuant to the Act and eligibility for Section 180(c) funds under the Act. Bob Halstead,

State of Nevada, said that because the Tribes are as affected as the Nevada counties, he would pursue a recommendation with his management regarding “affected Tribes” in the upcoming Draft Environmental Impact Statement on Nevada Rail. Another Tribal member reminded the audience that the DOE “Indian Policy” uses the term “affected status,” and questioned how certain Tribes could not be “affected” when adjacent cities, counties and municipalities are included in OCRWM’s outreach efforts. He Stated this will be an issue brought up at the next STGWG meeting.

- Another Tribal representative recommended OCRWM develop a Tribal involvement plan detailing how DOE plans to work with the “39 Tribes” and a regional approach for Tribal meetings. A document or matrix listing resolutions and legal positions would also help gauge the schedule of activities for the next 6 months and assess the success of the Tribal Topic Group. Jay replied that OCRWM does have an internal report that provides a running account of Tribal interactions including individual contacts and meetings.

#### EM Implementation Framework Document (Jay Jones, OCRWM, and Willie Preacher, Shoshone-Bannock Tribes)

- Brandt Petrasek (DOE/EM) is the point-of-contact for the EM Implementation Framework, which defines how the DOE Indian Policy will be implemented by the EM program. OCRWM may want to develop a similar document.
- Willie Preacher has been involved in preparation and review of the document and offered his perspective. He feels DOE is not living up to the spirit of the Indian Policy. They are not meeting with Tribes and failed to communicate/consult with the Shoshone-Bannock Tribes before giving away Tribal lands. Reapproval of the Indian Policy took place in Seattle, WA, in 1992 without Tribal consultation. The Annual Tribal Summit called for in the Policy is not taking place; one was held and, in the eyes of Tribes, it was not effective. A meeting was held last year in Baltimore to work on the Framework Document; STGWG members, including Willie, other Tribal representatives, and DOE staff were involved in that process. Willie suggested DOE put together a “lessons learned” document for Tribal interaction.
- The American Indian Policy is available online at <http://www.ci.doe.gov/indianbk.pdf>.

#### TEPP Model Needs Assessment Demonstration (Tom Clawson, Technical Resources Group, Inc.)

Tom Clawson provided an overview of EM’s Transportation Emergency Preparedness Program (TEPP) Model Needs Assessment and performed an online demonstration. The program is available online at [TEPPinfo.com](http://TEPPinfo.com) (click on Tools and proceed with obtaining a userid and password). The Assessment looks at response capabilities in each area of a specific jurisdiction to help determine preparedness for emergency response to radioactive transportation incidents, with a goal of determining a jurisdiction’s strengths and identifying areas where improvement is needed. In the past, Tom has worked online with Acoma and Laguna Pueblos in New Mexico to complete the Model Needs Assessment. Sue Loudner, Acoma Pueblo, recommended that users print out a hard copy of the document and review with their responder staff before completing the Assessment online. Tom Clawson can be reached at 208-528-8895 or by e-mail at [tom@trgroupinc.com](mailto:tom@trgroupinc.com).

#### 180(c) Discussion (led by Corinne Macaluso, OCRWM)

This discussion took the form of a question and answer period.

Q: Is defense waste included in 180(c)?

A: Any waste shipped by OCRWM will be included.

Q: Is Los Alamos National Laboratory to be included on the Yucca Mountain routes?

A: Ella McNeil (DOE/EM) is the appropriate point-of-contact for EM-related questions. She can be reached by phone at 301-903-7284 or by e-mail at [ella.mcneil@em.doe.gov](mailto:ella.mcneil@em.doe.gov). Shipments from Los Alamos National Laboratory would come under EM's purview, not OCRWM's.

Q: Page 2 of the 180(c) paper mentions "interested Tribes." Option 1 needs an approach.

A: "Eligible" would be a better word.

Q: DOE needs to determine who the "affected Tribes" are.

A: For purposes of 180(c), a Tribe is eligible if the route goes through their reservation.

Q: What about aboriginal and treaty right lands?

A: OCRWM has approached DOE Office of General Counsel about this issue; the answer is leaning toward including only reservation lands.

Q: How do you put a dollar figure on the findings of the Model Needs Assessment?

A: There is no definitive answer to that question. The assessment will help applicants determine training needs, number of people to be trained, level of training, etc. This would involve determining the number of resource hours, which would likely assist in determining costs.

Q: What are the criteria for being on the list of "affected Tribes" for Yucca Mountain?

A: Reservation is within ½ mile of proposed routes. Jay agreed to send the list of 39 Tribes to members of the Tribal Topic Group.

A member of the Tribal Topic Group suggested that DOE use Acoma as a model for the 180(c) funding process based on the results of their Model Needs Assessment.

Corinne told the group she would like to amend the *Federal Register Notice* based on the 180(c) paper or issue a supplement to the *Notice*. Group members expressed their concern that such an action would not represent comments from all Tribes. Following a short discussion, Corinne said she would forward the language that would constitute the *Draft Federal Register Notice* (or supplement) to members of the Tribal Topic Group and the 39 Yucca Mountain Tribes for comment. Following that action, OCRWM will hold a workshop with the 39 Tribes to discuss 180(c) and the *Federal Register Notice* (and/or the supplement to the *Notice*) (hope to issue in spring 2007). Publication of the *Notice* (or supplement) would follow the workshop.

In other discussions, a participant said that the proposed Midwest rail route will have potential impact on a larger area not covered by current OCRWM methodologies. A formal routing criterion for Tribal lands in addition to reservation lands is needed.

Corinne ended the meeting with a summary of the *Federal Register Notice* process discussed above.

### **ACTION ITEMS FOR TRIBAL TOPIC GROUP**

- Forward draft summary of Tribal Topic Group meeting to participants for review (W. Portner, SAIC)
- Provide Group members with listing of 39 Tribes (J. Jones, DOE, and W. Portner, SAIC)
- Consider meeting with BIA to discuss "affected Tribes" status (J. Jones, C. Macaluso, DOE)
- Provide Group members with summary of OCRWM Tribal interactions related to Yucca Mountain (J. Jones, DOE, and W. Portner, SAIC)
- Provide Group members and 39 Tribes with language that would constitute the draft *Federal Register Notice* (or supplement to the *Notice*) on 180(c) for review. Follow up with workshop. Publish *Notice*

(or supplement) (C. Macaluso, DOE)

- Provide interested Group members with copy of National Academies Report on Transportation (W. Portner, SAIC)
- Include Website address for DOE Indian Policy in Tribal Topic Group meeting summary (W. Portner, SAIC)
- Follow up on contacts with 39 Tribes and meet with remaining Tribes to provide information on OCRWM program and 180(c) (J. Jones, DOE, and contractor staff)
- Provide information to Tribal Topic Group members and solicit appropriate Tribal participation in new TEC Routing Topic Group (J. Jones, DOE)
- Consider using the Acoma Pueblo as a funding model based on their Model Needs Assessment (C. Macaluso, DOE)